

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-507507-D1 AND ALL
OTHER SEAMAN DOCUMENTS

Issued to: John Henry Willis

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1508

JOHN HENRY WILLIS

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 30 September 1964, an Examiner of the United States Coast Guard at New York, New York revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as a tourist-class bedroom steward on board the SS CONSTITUTION under authority of the document above described, on or about 18 July 1963, and at various times previous thereto, the appellant wrongfully fraternized with a passenger, Mrs. Ada Servello, by having sexual intercourse with her in tourist-class room 480, the vessel then being en route from Algeciras, Spain to New York, New York.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of two witnesses and entries from the Official Logbook. By stipulation, the certified record of Appellant's trial for rape in the United States District Court for the Southern District of New York, in which the Appellant was acquitted, was entered in evidence. The facts which constituted the defense in that criminal trial are those on which the present action is based.

In defense, the only evidence submitted was a report from the Chief Surgeon of the vessel to the Master which concerned Mrs. Servello's complaint that she had been raped by Appellant on 18 July 1963.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification had been proved. The Examiner entered an order revoking all documents issued to Appellant.

FINDINGS OF FACT

During a period including 13 through 18 July 1963, Appellant was serving as a tourist-class bedroom steward on board the SS CONSTITUTION and acting under authority of his document

while the ship was at sea en route from Algeciras, Spain to New York City.

Mrs. Ada Servello, age twenty-three, boarded the vessel at Naples, Italy with her husband, Francesco on 11 July 1963. They occupied tourist-class room 478 on "B" deck which was one of the bedrooms assigned to the Appellant. On the night the couple came aboard, the Appellant was conversing with them when he felt Mrs. Servello's hand on one of his hands. The next day she came to the linen locker and after some exchange of language lessons (the woman spoke only Italian), she placed her arms around Appellant's shoulders before departing.

On the following morning, 13 July 1963, the Appellant was working in a vacant bedroom, number 480, on "B" deck. Mrs. Servello entered the room and put her arms around Appellant, calling him "mia amore" (my love). The Appellant closed the door and engaged in sexual intercourse with the woman. This occurred on the four subsequent mornings of 15, 16, 17 and 18 July in room 480. The Appellant admitted that he had engaged in sexual intercourse with about five other women passengers during prior voyages.

The disciplinary record of the Appellant consists of a suspension in 1950 for obscene language to the Chief Steward, failure to turn to, and failure to perform duties; and an admonition in 1952 for absence without leave.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that basic evidentiary rules of criminal law must be taken into consideration, due to the criminal nature of the charge, and, accordingly, the Appellant can not be found guilty of the charge and specification on his own uncorroborated admissions. Three court decisions are cited: Martin v. United States, 264 Fed. 950 (8th Cir. 1920); Atkins v. Government of Guam, 129 F. Supp. 854 (D. Guam 1955); Gonzalez-Jasso v. Rogers, 264 F.2d 584 (D.C. Cir. 1959).

In addition, it is urged that even if the charge and specification are found proved, the order is excessive.

APPEARANCE: Jack C. Brill, Esquire, of New York, New York.

OPINION

Two of the cases cited by Appellant are criminal and the third one applies, by analogy, the criminal rule that certain confessions or admissions are not sufficient unless corroborated by independent evidence of the corpus delicti. However, the present proceedings are remedial since they are intended to maintain standards of competence and conduct essential to promote the safety of life and property at sea. Therefore, the cited cases do not apply to these administrative proceedings which are not penal in nature.

More appropriate to the present action is the established principle that "a party can not in his own case, be heard by a court to deny today what he solemnly swore was true on yesterday, without

some explanation or excuse." Massie v. Parker, 128 F.2d 99 (6th Cir. 1942). To the same effect, see Hardware Mutual Casualty Company v. Chapman, 272 F.2d 614, 617 (7th Cir. 1959); and Douds v. Seafarers' International Union, Etc., 148 F. Supp. 953 (E.D. N.Y. 1957). In the latter case, it is stated that testimony from a prior proceeding is valid evidence but that it may be explained. See also 31 A C.J.S. 927, Evidence, sec. 381f. At the hearing, the Appellant not only did not explain or contradict the testimony he gave at the criminal trial, but Appellant's testimony was, in effect, repeated by stipulating it in evidence at the hearing. Consequently, there is no question that the testimony of the Appellant from the criminal trial constituted substantial evidence. In fact, it is this testimony upon which the above findings of fact are almost entirely based.

Also, the testimony of Walter Williams, who was employed aboard the SS CONSTITUTION as a tourist-class deck steward, corroborates the admissions of the Appellant that he was having an "affair" with Mrs. Servello. Williams testified that Appellant said he was going to bed with Mrs. Servello (R. 63, 70) in the mornings between 9 and 10 o'clock (R.59) and asked Williams to inform Appellant in room 480 if Mr. Servello (the husband) left the deck in the morning (R.59). Williams also stated that he noticed on two or three occasions that Mrs. Servello left the deck in the morning at about 0900 and was absent approximately 30 to 45 minutes while her husband remained on deck (R.57, 67, 69, 70). Therefore, the testimony of Williams would have been more than sufficient if corroboration had been essential. It would not be consistent with the obligation of promoting the safety of life and property at sea to permit a person of such moral laxness to continue to sail while pursuing his own pleasures in neglect of his duties and at the expense of a passenger. Accordingly, the order of revocation is appropriate under the circumstances.

CONCLUSION

I conclude that there is in this record reliable, probative and substantial evidence to prove the offense alleged.

ORDER

The order of the Examiner dated at New York, New York, on 30 September 1964, is AFFIRMED.

W. D. Shields
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 18th day of June 1965.

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